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No. 08-592

Supreme Court, U.S.
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In The

Supreme Court of the United States

LAURA SCHUBERT,

Petitioner,

v.

PLEASANT GLADE ASSEMBLY OF GOD, REVEREND LLOYD A. McCUTCHEN, ROD LINZAY, HOLLY LINZAY, SANDRA SMITH, BECKY BICKEL and PAUL PATTERSON,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Texas

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Should this Court decide whether Texas courts will assert jurisdiction over a Texas personal injury case?

II. Should this Court re-set the parameters of Texas personal injury law, so that a recovery of mental anguish damages can be made from a church consistent with the Free Exercise Clause?

III. Does the Free Exercise Clause limit the recovery of personal injury damages from a church for emotional injuries to one of its members?

IV. Did Petitioner waive her complaints (about constitutional limitations on her recovery of damages for emotional injuries) by not appealing from the original *In re Pleasant Glade* decision in 1998?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Pleasant Glade Assembly of God (the "Church") was a Non-Profit Corporation incorporated under Texas law. It had no parents or subsidiaries, nor any public company that owned 10% or more of its stock. The Church is currently defunct.

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JURISDICTION

The question presented by Petitioner is a mixture of state personal injury law and constitutional law. This Court has jurisdiction under 28 U.S.C. § 1257(a), but such jurisdiction only extends to a *small portion* of the question presented by Petitioner Laura Schubert. Petitioner originally brought state law personal injury claims as a tort plaintiff. The Free Exercise Clause (the only federal question) was raised by Defendants/Respondents as an *affirmative defense.* The Church and other Respondents successfully invoked the Free Exercise Clauses in both the U.S. Constitution and the Texas Constitution, Art. 1, § 6.

This Court has jurisdiction over the Respondents' *affirmative defense* under the United States Constitution, because such a defense is a "right, privilege or immunity" under the Constitution. 28 U.S.C. § 1257(a). But, this Court lacks jurisdiction to describe the parameters of the right which Petitioner ultimately seeks to vindicate: the right to have a Texas court assert jurisdiction over a personal injury case to recover mental anguish damages under Texas law. *Murdock v. City of Memphis,* 87 U.S. 590, 626 (1875) (this Court's jurisdiction is only over federal questions). Also, this Court lacks jurisdiction to decide other unresolved state law barriers to Petitioner's personal injury recovery: the unique Free Exercise Clause under the Texas Constitution, the common law constraints against awards for mental anguish (when there is no malice nor foreseeability of injury), the *in loco parentis* defense, and the lack of

reliable psychological evidence on causation. This Court usually reserves its jurisdiction to decide clearly presented Constitutional questions that will control the final outcome of a case. The most this Court could do is to reverse and remand the case and order that Petitioner's claims be adjudicated by Texas courts under Texas personal injury law, if the Texas Constitution's Free Exercise Clause permits. Thus, this case could be "a classic example of a case where 'the same judgment would be rendered by the state court after we corrected its views of federal laws,'" *Richardson v. Ramirez,* 418 U.S. 24, 60 (1974), quoting, *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945).

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

TEXAS CONSTITUTION

Article 1 - Bill of Rights
Section 6 – Freedom of Worship

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. . . . No human authority ought,

in any case whatever, to control or interfere with the rights of conscience in matters of religion. . . .

INTRODUCTION

Petitioner Laura Schubert and her family were once members of a Pentecostal church, Pleasant Glade Assembly of God. Petitioner brought state law personal injury claims against the Church, its Pastors, and members. The suit complained of emotional injuries from "spiritual warfare" activities that arose during church services. This spiritual warfare included the practice of "laying on of hands" and prayers that Laura be delivered from evil spirits (*i.e.*, protected from demons). During these prayers, Laura was thrashing and complaining about demons attacking her. At times, she was physically restrained during the prayers. Ultimately, "I said the name *Jesus* and they let me up."

At first, Laura's family brought an informal religious complaint within the Church, citing biblical scriptures to support their position that the religious conduct was inappropriate. These complaints alleged that Laura was a victim of "friendly fire" in "spiritual warfare." When the ecclesiastical complaints failed to bring any relief, Petitioner filed this civil suit and sought damages to compensate her for an emotional injury, Post Traumatic Stress Disorder. She alleged that her PTSD was brought on by the "Hyper-spiritualistic environment" at her church. Her

injuries included her "loss of faith." Her PTSD is triggered by "anything religious," such as spiritual hymns or biblical scriptures.

The Texas Supreme Court correctly concluded that her claims were similar to claims for *intentional infliction of emotional distress*, a controversial common law tort. Under state law, the conduct of the defendant is not emotionally tortious, unless the conduct is "extreme and outrageous" in the context of surrounding circumstances. But, applying such a test for outrageousness would require passing upon the merits of the Church's practices about "spiritual warfare." And, tort claims to recover mental anguish would require deciding upon the culpability of the defendant's intentions, *i.e.* whether the church members were guilty of acting with malice. If not, then mental anguish damages are not recoverable.

The Texas Supreme Court held below that such judicial inquiries were beyond the *jurisdiction* of the Texas courts. Texas courts were constrained by the First Amendment of the United States Constitution, and a unique Free Exercise provision in the Texas state constitution. Pursuing this tort path would take the courts into forbidden territory: protected religious conduct.

Petitioner now seeks to advance a state law claim by having this Court force the Texas courts to exercise jurisdiction over her personal injury claim. Presumably, this Court would then order the weighing of the Church's conduct under Texas law. To grant

certiorari, this Court would have to conclude that it is in a superior position to map the contours of Texas personal injury law, and thereby determine that such law is actually "neutral" concerning religion, under the standard of *Employment Div., Dept. of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990). And, granting certiorari would, itself, be a rejection of the Ecclesiastical Autonomy Doctrine.

This Court should not compel a Texas state court to exercise jurisdiction over a Texas personal injury claim. Tort law about mental injuries is neither objective nor neutral. Objective rules of law cannot be applied to judge a Pentecostal church's response to Petitioner's urgent complaints that she was being attacked by demons during church services.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

This is a fact-intensive case that led to unique state law claims about psychological injuries (Post Traumatic Stress Disorder) following "spiritual warfare" when Petitioner Laura Schubert complained that she was being attacked by demons during church services. There has never been a similar claim in United States courts.[1]

[1] Virtually all suits against churches and other religious institutions that may invade their Free Exercise rights are

(Continued on following page)

A. Spiritual Warfare – A Controversial Tenet Of The Pentecostal Church

The Church was sued and found liable due to "spiritual warfare" activities in its Church services. A counselor who treated Laura Schubert rendered the opinion that the "hyper-spiritualistic atmosphere" in the Church caused Laura's emotional problems. (RR 8, p. 3-5) Laura's father, a missionary within the Pentecostal church, complained that Laura was a victim of "friendly fire" from spiritual warfare. (App. 6)

The Church, Pleasant Glade Assembly of God, was[2] a church within the Assemblies of God (AG) denomination.[3] The Assemblies of God is a mainline Christian denomination that was formed in 1914. Its members are referred to as "Pentecostals" because of a biblical incident of the same name.[4] The name "Pentecostal" is taken from the biblical description of

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compiled in one annotation: Alan Stephens, *Free Exercise of Religion Clause of First Amendment as Defense to Tort Liability*, 93 A.L.R. Fed. 754, 774-77 (1989).

[2] The Church entity is now defunct, having merged its congregation into another Assembly of God church during the ten years of this litigation.

[3] For ease of Briefing, Respondents will employ the term "the Church" collectively to refer to both the Church entity, and the individual Pastors and Members who belonged to the Church.

[4] *The New International Dictionary of Pentecostal and Charismatic Movements*, p. 333-335 (Zondervan Publishing 2002).

an unusual event in which early Christians were energized when the Holy Spirit descended upon them and they began to "speak in other tongues." They enthusiastically spread through a nearby crowd speaking in tongues and working miracles. (New International Bible, Book of Acts 2: 1-21).

Pentecostal services often include vigorous physical activities. Upon being "filled with the Holy Spirit" during their services, Pentecostals may enthusiastically engage in divine healing, prophecies, speaking in unknown tongues (glossolalia), and sometimes the "binding" or "casting out" of demons.[5] Depending upon the movement of the spirit, all of this may occur at the same time. Some church members fall unconscious to the floor because they have been "slain in the spirit."[6] As at the original biblical Pentecost, to outsiders Pentecostals may appear to be drunken.[7]

"Spiritual warfare" against demons is a uniquely Pentecostal practice. Pentecostals are not unique because they believe in the *existence* of demons.

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[5] These various Pentecostal experiences, "laying on of hands", exorcism, and speaking in other tongues (glossolalia) are explained in detail in *The New International Dictionary of Pentecostal and Charismatic Movements*, p. 624-627, 670-672, 834-836 (Zondervan Publishing 2002).

[6] *Id.* at 1072-1074 ("Slain In The Spirit").

[7] The bible indicates that, at the original Pentecost, outside observers concluded that the disciples had consumed too much wine. Book of Acts 2: 13, 15.

Virtually every major world religion believes that demons exist.[8]

What makes Pentecostals controversial is that they believe in engaging in active "spiritual warfare" against demons.[9] Stanley M. Burgess, ed. *Encyclopedia of Pentecostal and Charismatic Christianity*, p. 123 (Berkshire Publishing 2006) This warfare against demons is one of the unique attributes of Pentecostals.

> Church growth proponents have noted seriously dealing with demonic opposition has been one of the distinctive marks of Pentecostal growth . . .
>
> Pentecostals accept the fact that most men and women today believe that demons and evil spirits (varying forms of Satan and dark thoughts) do invade them, bind them, and

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[8] *The Oxford Dictionary of World Religions*, p. 268 (Oxford Press 1997) explains the world-wide belief in demons:

> Demonic figures appear in all religions. Examples are: in Judaism, dibbuks, golems; in Christianity, fallen angels; in Islam, shaitans; in Hinduism, asuras, raksasas; in Buddhism, asuras, yakkhas, mara; in China, kuei. These personified descriptions of the forces of evil are clearly evoked by the universal human experience of encountering evil, not as an abstraction, but as more like the consequence of personal agency.

[9] "Since the Gospels are replete with the accounts of the power of Jesus over demons, pentecostals have seen the ministry of Jesus as the biblical paradigm for the practice of exorcism." *The New International Dictionary of Pentecostal and Charismatic Movements*, p. 624 (Zondervan Publishing 2002).

> rule over them. Pentecostals believe that the mighty name of Jesus drives out evil spirits and heals all manner of sickness.

The New International Dictionary of Pentecostal and Charismatic Movements, p. 627 (Zondervan Publishing 2002). This spiritual warfare includes *Exorcism* for people who are inwardly "possessed" by demons, and *Deliverance* for people who are outwardly oppressed by demons. The differences between the two are subtle.[10]

Tens of millions of Pentecostal followers pursue these beliefs without any visible sign of emotional distress. For example, Sarah Palin has been a member of the Assemblies of God denomination since her youth.[11] Like the Church here, Sarah Palin has been derided for her beliefs in "spiritual warfare." Persons with actual video of her being spiritually protected from the powers of "witchcraft" posted the videos on YouTube. They generally derided Pentecostal concerns that witchcraft was a serious concern in Wasilla, Alaska. To outsiders, Pentecostal practices are sometimes weird.

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[10] Stanley M. Burgess, ed. *Encyclopedia of Pentecostal and Charismatic Christianity,* p. 123 (Berkshire Publishing 2006) (exploring technical distinctions between Exorcism of persons who are possessed, and Deliverance for persons who are oppressed). See also *The New International Dictionary Of Pentecostal And Charismatic Movements* (Exorcism: Classification and Terminology) p. 626 (Zondervan Publishing 2002).

[11] She was a member of the Wasilla Assemblies of God.

B. The Schubert Family – Once Advocates Of The Pentecostal Message

The entire Schubert family grew up advocating this "spiritual warfare" theology. The father, Tom Schubert, was a missionary proclaiming this faith in Africa. The entire Schubert family was involved in this missionary effort. As a child, Laura Schubert attended hundreds of such Pentecostal church services, sometimes as an active participant to advance her family's missionary efforts. (RR 8, p. 113) And, she was an active participant in the Pleasant Glade Assembly of God, a Respondent here. In the week prior to the incidents in this case, Laura had spent more than *60 hours* at the Church. There was no evidence that she was coerced or forced to attend. This was simply normal church life for her and her family. (RR 4, p. 67)

C. Laura Was Left In The Care Of The Pentecostal Church

The weekend of June 8th – June 9th, 1996 was the first time that parents Tom and Judy Schubert left their three teenage children alone. The parents flew to Indiana for the weekend, knowing that teenager Laura Schubert would usually be at their Pentecostal church in Colleyville, Texas. (RR 5, p. 195-196, 198) They left with the expectation that the church members would exercise parental supervision (*in loco parentis*) over their children. (RR 8, p. 135-137)

On Friday, June 7th, Laura spent the entire night of Friday night at the Church. The youth had a "lock in." (RR 4, p. 68-69) Youth Pastor Rod Linzay and various members of the Church engaged in many religious activities relating to "spiritual warfare." This started when one of the members of the youth group claimed to have seen a demon in the Church. Rod Linzay talked to the youth extensively about demons and led them in vigorous "spiritual warfare" against the demons. Typical of Pentecostal practices, the spiritual warfare against the demons included vigorous activities. This warfare ended sometime Saturday morning with the Youth Pastor sharing a vision from God about defeating the demons.[12]

The next day Laura worked extensively and did not sleep for a second night. She entered Sunday having been largely deprived of sleep for two days and having eaten almost nothing during this week-end. (RR 4, p. 68-69)

On Sunday *morning*, June 9th, Laura stood up in front of the Church and gave a moving testimonial to the congregation to announce her calling to become a missionary overseas. She would follow in her father's footsteps and become a missionary for the Pentecostal church. (RR 5, p. 75-76)

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[12] See App. 3.

At the end of this service, Laura' younger brother, Joey, went up to the front of the Church and collapsed. Joey has a long history of emotional/mental problems variously described as agoraphobia or adjustment disorders. (RR 6, p. 26, 28; RR 5, p. 117) Joey's behavior was unusual. He foamed at the mouth and trembled while various members of the Church, including Laura, placed their hands upon him and prayed over him for hours. (CR 9, p. 1513-1514; RR 5, p. 80-82; RR 14, p. 259-260) Joey would later testify that he had been restrained against his will by the church members, including his sister Laura. (RR 15, p. 220-221) But, he did not assert any legal claims.

D. Sunday Night Service – Laura Collapses To The Floor

By the end of the Sunday evening service, Laura was "dog-tired." (RR 4, p. 11) At the close of the Sunday evening service, while virtually everyone was still present, Laura went up to the front of the Church near the altar. She said something to a friend about feeling ill, and then fainted down to the floor. (RR 5, p. 80) *This was the first time that attention had focused on Laura*. Laura explained what she did that attracted the attention of the Church:

> Q: When you were in this condition on the floor of the church, did you make statements about Satan trying to get you, or demons trying to get?
>
> A: [Laura] I believe I was hallucinating.

Q: **Did you make statements along the lines of Satan's trying to get me or he's trying to get us all? Did you make those statements during this collapse experience?**

A: [Laura] **Yes, I believe I did.**

(RR 8, p. 180-181) (CR 9, p. 1521) (emphasis added).

Laura was writhing on the floor, hallucinating about demons, clenching her fists tightly, foaming at the mouth, making guttural noises, and sweating profusely. (RR 9, p. 148, 266; RR 15, p. 73) How should a Pentecostal react? They believe in spiritual diagnosis by "discernment," by looking at "various signs of demonization . . . strange behavior or moodiness, and sudden changes of voice or emotions."[13] The difficulty of this process of "discernment" is explained in Pastor McCutchen's Affidavit, App. 9-10.

Of course, outsiders would later disagree that this was a spiritual experience. One of Laura's medical doctors, Dr. Pentzien, later testified at trial that Laura had collapsed due to a medical condition: hypoglycemia. (RR 13, p. 244) Hypoglycemia is a deficiency of sugar (glucose) in the blood. The symptoms include acute fatigue, restlessness, malaise, marked irritability, weakness, mental disturbances,

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[13] *The New International Dictionary of Pentecostal and Charismatic Movements* (Exorcism, Methodology and Practices) p. 626 (Zondervan Publishing 2002).

and delirium.[14] Pentzien testified that Laura's experience was a "classic" set of symptoms of hypoglycemia, complete with the clenched fists, thrashing behavior and guttural sounds. (RR 15, p. 73)[15]

All the witnesses agreed about the general sequence of events. All witnesses agreed that everyone who came over to Laura, did so in an effort to assist her. (RR 12, p. 102-103, 177) There is no evidence that anyone approached Laura with any desire to hurt her (RR 15, p. 152; RR 12, p. 102, 141) or because they had any feelings of ill will or malice toward her.

At times church members grabbed her arms and hands and restrained her against her will. (RR 5, p. 140, 163) Later, she was "walked around" the sanctuary with her arms draped over the necks of several church members. (RR 8, p. 155-156; RR 12, p. 7, 11, 41, 176-177, 224; RR 13, p. 80)

The church members became concerned that Laura was gathering a crowd of admirers by summoning the youth group to tell them about a "vision"

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[14] See Pentzien at RR 13, p. 245-246; RR 15, p. 73; *Taber's Cyclopedic Medical Dictionary* (17th ed. 1993) p. 947.

[15] There was much dispute on whether Laura was thrashing because the church members were restraining her, or they were restraining her because she was thrashing. However, no one testified that restraining her somehow was the cause of her hallucinating about demons attacking her. Depending on one's beliefs, this was caused by: (1) fatigue and hypoglycemia; (2) psychological problems; or (3) demons attacking her.

she had while on the floor of the Church. (RR 9, p. 271; RR 13, p. 197-199, 205-206) At some point Laura was taken back to a Sunday School room. (RR 12, p. 60, 69) Laura testified that this was done, not out of any desire to confine her, but because the adults "wanted me to be away from the kids, because they felt like the kids were upsetting me." (RR 4, p. 74)

According to Laura, she was held in the room by the use of vigorous force, despite her demands that people get away from her. (RR 4, p. 73-74, 75) She testified that she was allowed to get up only when she finally "did what they asked." (RR 4, p. 77) "Eventually, yes. I complied with what they wanted me to do. I said the name *Jesus* and they let me up." (RR 4, p. 73-74; CR 9, p. 1522)

Why was the utterance of the name of *Jesus* so important? Under Pentecostal beliefs, demonic control over a person causes them to have an "irrational and violent reaction against the name of Jesus." But, confessing the name of *Jesus* is protection against demonic possession or oppression.[16] As one Pentecostal authority explains, "The primary method of deliverance is the name of *Jesus*, used with a sense of authority to abjure the demon to release the person." Stanley M. Burgess, ed. *Encyclopedia of Pentecostal*

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[16] *The New International Dictionary of Pentecostal and Charismatic Movements* (Exorcism, Methodology and Practices) p. 625 (Zondervan Publishing 2002).

and Charismatic Christianity p. 125 (Berkshire Publishing 2006).

The next events were undisputed. The youth group, including Laura, proceeded to McDonald's where they ate supper, and then to a church member's house to watch a movie. (RR 12, p. 182; RR 13, p. 211) On Monday, Tuesday, and Wednesday, Laura returned to the Church for extended periods of time. Nothing eventful occurred, until the Wednesday night Youth Service. (RR 4, p. 81)

E. Wednesday Night Service – Laura Curls Up Into A Fetal Position

The Wednesday Youth Service was held in a separate building, apart from the main sanctuary. Again, Laura's parents were not at the Church, though they were back in town.

The Youth Pastor was in charge of the service. According to Laura, at the end of the service she curled up into a fetal position, because she wanted to be left alone. (RR 4, p. 82) According to several witnesses, Laura *yelled* something like "no" or "get away." (RR 4, p. 82-83) This was interpreted in different ways. To Laura, she was speaking to persons around her, telling them to leave her alone. To the church members, she was not speaking to anyone physically present. They believed Laura was having another episode like the previous Sunday night when she had been fending off unseen spiritual attackers. (RR 14, p. 129, 168; RR 15, p. 153)

According to Laura, the youth, under the direction of the Youth Pastor, then told the youth members to hold Laura down. (RR 4, p. 209; RR 5, p. 162) She testified that she was held in a "spread eagle" position with numerous youths holding down her arms and legs. (RR 4, p. 85) While this might seem strange to an outsider, Pentecostals believe that persons afflicted with demons are possessed with remarkable strength.[17] In one biblical example that continues to be cited in Pentecostal literature, a demon attacked the persons attempting exorcism, "so that they fled out of that house naked and wounded." (Acts 19: 11-17)

Adults were summoned from the main sanctuary to help Laura. At some point, the Senior Pastor, Lloyd McCutchen, was summoned from the main service to the youth room. (RR 12, p. 94-95)[18] Thus, this was his first and only direct encounter with Laura. (RR 12, p. 92-94) He came over to the youth building, put his hand upon her forehead and prayed the name of

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[17] "Astounding strength" is one of the characteristics of a demonic presence, Stanley M. Burgess, ed. *Encyclopedia of Pentecostal and Charismatic Christianity*, p. 123 (Berkshire Publishing 2006), in accordance with biblical accounts of demonic persons being "exceedingly fierce" (Matthew 8: 28), breaking chains (Mark 5: 3-5), and attacking persons who resist them (Acts 19: 11-17).

[18] He had not been present for the Sunday evening episode, having departed from the Church with a guest singer prior to the time that Laura collapsed to the floor of the Church. (RR 12, p. 90-91)

Jesus. (RR 12, p. 97, 146; RR 14 p. 66; Petition, Appendix 5a) There was no evidence that he "assaulted" her, nor that he "imprisoned" her. But, the jury found both, and he was assessed the largest share of fault: 50% of the comparative responsibility.

Someone suggested that they call Laura's parents, and Pastor McCutchen agreed. (RR 11, p. 12; RR 12, p. 132-133) Tom and Judy Schubert drove up to the Church. (RR 8, p. 44) They then entered the Church and, for the first time, actually entered these events. Tom described finding Laura in an exhausted position. (RR 8, p. 45) But, she did not require any medical attention. (RR 8, p. 47; RR 4, p. 90; RR 12, p. 100) Instead, they went to Bennigan's for a meal and then went home. (RR 4, p. 87; RR 8, p. 46) Laura received no medical treatment for any bodily injuries from these incidents. Her injuries were psychological.

In the days that followed, Laura resumed her activities at the Church. (RR 5 p. 130-133) But, Laura began to have sleepless nights and anxieties about demons. (Tom Schubert's letter, App. 5) Depending on one's beliefs these anxieties were either psychological symptoms or actual demons. At the time, Laura believed they were real. She ultimately brought suit to recover damages for this mental anguish.

F. The First Psychological Care – Hyper-Spiritualistic Environment

Laura's first visit with any type of psychologist or counselor was on June 27, 1996. The psychological notes include events about her traumatic childhood in Africa, but then include the opinion that the *hyper-spiritual environment* at the Church was the cause of her current anxieties. (RR 4, p. 157) "Hyper" is the psychological and medical term for an *excess*.[19] This psychological diagnosis was admitted into evidence in the jury trial below, despite Respondent's First Amendment objections. (RR 8, p. 5-6)

During the years that followed, Laura saw many different counselors and was sometimes admitted to psychiatric institutions for several days. (RR 4, p. 102, 104) Her psychological records contain widely varying symptoms and traumas. Some counselors diagnosed Laura with other conditions (such as Borderline Personality Disorder), and other causes, such as a traumatic and violent childhood in Africa. But, at trial she introduced the records, indicating that she had PTSD as a result of activities at the Church.

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[19] In medical and psychological terminology, the term "hyper" is a prefix meaning "above, excessive, or beyond." Clayton L. Thomas, ed., *Taber's Cyclopedic Medical Dictionary*, p. 930 (17th ed. 1993). For example, hyper-activity is "excessive activity." *Id.*

G. This Case Began And Ended As A Religious Dispute

After the events at the Church, Tom Schubert, then a Pastor and Missionary for the Assembly of God denomination, wrote letters complaining to Senior Pastor McCutchen about the entire weekend. His complaints were entirely religious, quoting doctrines and scriptures. He did not complain of any restraint or assault. His description is filled with battleground metaphors:

> What those kids went through during a night of spiritual battle was just as hurtful as what Laura faced in Africa. Laura knows that Demons are bigger and more dangerous than Cameroonian soldiers with machine guns. Pray for her. She went through a war and is now a casualty, feeling abandoned by her own troops at the front lines as an injured soldier. She deserves a purple heart because she fought a good fight, though she took a hit from *friendly fire*.
>
> We are believing that in time she will be able to be trained to go back to the front lines of the battle and to fulfill the ministry call that she received at the altars of Pleasant Glade.

Tom Schubert's letter of August 2, 1996, App. 6, emphasis added. He ended his letter by entusting this matter to church authorities, saying, "We will leave it to you to investigate if you feel it is necessary . . . I am placing this situation in your hands and hope God gives you wisdom." The Senior Pastor responded

explaining why he believed the activities at the Church were entirely consistent with scripture and the teachings of the Church.

Not receiving satisfaction at this level, Tom Schubert then appealed to the denomination's District Superintendent, Derwood Dubose, who holds the ecclesiastical office that is equivalent to a Bishop. Tom Schubert again demanded that disciplinary action be taken against the Church, because their religious practices were spiritually incorrect. *Id.* at p. 117-124. Not receiving ecclesiastical satisfaction, he then filed this lawsuit in court.

II. PROCEEDINGS BELOW

The Original Complaint was filled with allegations about the Church's religious statements about demons, God, the use of a cross, prayers, exorcism, etc. (CR 1, p. 4-16) In response to the original dismissal motion, Tom Schubert authored his own Affidavit complaining that the conduct at the Church was, according to him, out of line with the beliefs and practices of the Assembly of God denomination. (See p. 161-166 to Appendix to Petition for Writ of Mandamus proceeding.) The basis of his complaint was that, while prayers about demons might be appropriate for *non-believers*, Laura was a *saved Christian*. Therefore, these prayers and practices were inappropriate *for her*,

due to her spiritual status. Pentecostal Theology is not so simple.[20]

The Original Complaint alleged that this religious conduct traumatized Laura Schubert and emotionally injured her by causing PTSD. (CR 1, p. 16-17) While the Original Petition also complained of physical restraint, the resulting injury from this physical conduct was alleged to be only some bruises and scratches.

Respondents filed a petition for mandamus (an interlocutory appeal) in the Texas appellate courts. The Court of Appeals agreed that large portions of the original case had to be dismissed, because the complaints violated the First Amendment guarantee of Free Exercise of religion. This dismissal in 1998 included *all* of Petitioner's claims that emotional distress had been inflicted upon her by the Church, either intentionally or negligently:

> Regarding negligent and intentional infliction of emotional distress, the First Amendment gives Pleasant Glade the right to

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[20] Tom Schubert argued that, since Laura was a Christian, she could not have been possessed by a demon. Some Pentecostal authorities respond with the reverse logic, "a major moral lapse or a series of smaller lapses allow one [a Christian] to fall under the power of the enemy. 'Possession' signals that the (former) believer is no longer a child of God." Stanley M. Burgess, ed. *Encyclopedia of Pentecostal and Charismatic Christianity* (Demonization and the Christian) p. 124 (Berkshire Publishing 2006). Thus, the fact that she was afflicted by demons may have been evidence of a fallen spiritual condition.

> engage in driving out demons – intangible or emotional harm cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for religious practices.

In re Pleasant Glade Assembly of God, 991 S.W.2d 85, 89 (Tex. App. – Fort Worth 1998, orig. proceeding), hereafter cited as the *Pleasant Glade I* decision.

Petitioner did not appeal nor seek further appellate review from this *Pleasant Glade I* decision. Instead, she appeared to go forward with a claim for *bodily injury* from false imprisonment and assault, on allegations that the Church and its members acted with *malice* and intended bodily harm.[21] While pretending to advance a bodily injury claim, Petitioner ultimately sought to circumvent the original Court of Appeals holding that she could not assert claims that emotional and intangible harms had been caused by religious conduct. Thus, during the trial (that was supposedly about bodily injury), she introduced her counseling records that the "Hyper-spiritualistic environment" during church services caused her emotional injuries.

During the trial, Laura's PTSD was directly linked to religion and the activities in the Church services. For example, one witness told about taking

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[21] In personal injury parlance, the term "personal injury" includes both "bodily injury" and "mental anguish." "Bodily injury" is a narrower category and does not include mental anguish. Black's Law Dictionary, p. 789-790, "Injury" (7th ed. 1999).

Laura on his family vacation. She showed no psychological problems until she attended a Pentecostal church service. She began to hear voices again, which she refers to as "auditory hallucinations." This testimony was offered for the sole purpose of showing that going to a Pentecostal church service triggered her PTSD. (RR 11, p. 22)

There was no proof that the Church Members or Pastors intended to harm Laura. As she admitted, they were intending to help her. (RR 4, p. 74) And, Laura's own witnesses negated foreseeability. Dr. Pentzien testified that, even if there had been a psychologist at the Church during the events, he could not have foreseen that these types of events would cause PTSD, because there was no violence nor bodily injury. (RR 13, p. 272-273)

The trial court refused to give any instruction to the jury about the First Amendment and its protections for the Free Exercise of Religion. And, the trial court refused to require that the plaintiffs prove malice or foreseeability. Thus, the jury was allowed to return a verdict for Petitioner, even though there was no evidence that anyone wanted to harm Laura, and even though it was not foreseeable that any of their conduct could cause PTSD.

After the Petitioner's favorable jury verdict, Tom Schubert then made a statement to the press, "This is a situation where religion went real bad." (Fort Worth Star-Telegram, March 23, 2002) Thus, from beginning

to end, this litigation has been a complaint about religion.

III. REASONS FOR DENYING THE PETITION

A. The Crux Of This Case Is The Nature Of Texas Personal Injury Law

The Texas Supreme Court held that the Petitioner's complaints would require a judicial inquiry that was beyond the *jurisdiction* of the Texas courts. Texas courts and Texas law had to yield to the First Amendment of the United States Constitution and the unique Free Exercise Clause in the Texas State Constitution. The court concluded that pursuing this tort path would not be neutral law, as required by *Employment Div., Dept. of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990). The Texas Supreme Court cited the United States Constitution, but also cited the Free Exercise Clause of the Texas Constitution. (Petitioner's Appendix A, p. 2a)[22]

Historically, this Court has granted deference to state supreme courts to decide the nature of their own laws, and the jurisdiction of their own courts. The Texas Supreme Court handed down a decision about Texas law, concluding that Texas law is not religiously neutral and would represent an interference with religion. It would seem appropriate for this

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[22] Similarly, the Court cited cases decided under the Free Exercise Clauses in both constitutions, such as *Tilton v. Marshall*, 925 S.W.2d 672, 682 (Tex. 1996).

Court to grant a certain amount of deference to the Texas court's conclusions about the nature of its own law. The interests of federalism would seem to indicate that a state's construction of its own laws should be respected by this Court.[23]

Petitioner now brings to this Court her own version of the relevant tort standard for recovery of mental anguish damages. Petitioner avoids any citation to Texas standards for recovering mental anguish damages. Instead, returning to the fiction that this is a claim for *bodily injury*, Petitioner cites authorities regarding liability standards for assault and false imprisonment. Petitioner then argues that such black-letter liability standards are *neutral* when it comes to religion.

But, the Texas Supreme Court did not classify this case as one of bodily injury. It concluded that her proof was similar to a claim for intentional infliction

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[23] This Court's deference to state courts to control the substance of their own laws and the scope of their own court's jurisdiction is reflected in several major precedents regarding federalism. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941); *Mullaney v. Wilbur*, 421 U.S. 684, 691, 95 S.Ct. 1881, 1886 (1975) ("This Court, however, repeatedly has held that state courts are the ultimate expositors of state law."); *Murdock v. City of Memphis*, 87 U.S. 590 (1875). Respondents do not argue that these precedents are similar to the case at bar, which is unique. But, the concerns of federalism suggest that a certain amount of deference is due to the Texas Supreme Court in deciding the non-neutral nature of Texas law.

of emotional distress. And, *liability* is only one-third of a personal injury case. A tort plaintiff must also prove that she suffered compensable *damages,* and demonstrate *causation*, *i.e.* that it was defendant's misconduct that proximately caused her damages.

B. Texas Personal Injury Law About Mental Anguish Is Not Neutral

When it comes to claims for emotional injuries, the law is not neutral. A body of law is "neutral" under *Smith*[24] if it involves *objective* factors that can be measured under clearly established standards without touching religion. For example, the law regarding the wording of deeds and real property is very objective. Therefore, law about ownership of real property can be neutrally applied to a church under a *Smith* analysis without concerns for church practices or doctrines. *Jones v. Wolf*, 443 U.S. 595, 603 (1979). In contrast, state personal injury law often fails the *Smith* test for neutrality. *Ayon v. Gourley,* 47 F.Supp.2d 1246 (D.Colo. 1998) (tort law often involves subjective judgments on whether conduct is appropriate or "outrageous," and therefore is not neutral law under *Smith*).

We briefly summarize relevant Texas law on (1) liability, (2) damages, and (3) causation. None are neutral. First, Texas *liability standards* for this type

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[24] *Employment Div., Dept. of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990).

of case are very subjective. The Texas Supreme Court, below, concluded that Petitioner's claims resembled claims for *intentional infliction of emotional distress*. This is a controversial tort, because it depends upon a standard of conduct being classified as "outrageous." *Vaughn v. Drennon,* 202 S.W.3d 308, 319 (Tex. App. – Tyler 2006) ("The test for determining what conduct is extreme and outrageous is essentially a subjective one."); *Fields v. Teamsters Local Union No. 988*, 23 S.W.3d 517, 534 (Tex. App. – Houston [1st Dist.] 2000), quoting Justice Hecht's separate opinion in *Twyman v. Twyman*, 855 S.W.2d 619, 629 (Tex. 1993):

> What is "outrageous" unavoidably depends upon the sensitivities of the person asked to decide and to some extent the community in which the conduct occurs. The term "outrageous" is neither value-free nor exacting. Because outrageousness is a subjective, almost personal, notion, its application is as much a matter of who decides as of what happened.

Similarly, even the law regarding *assault* is hardly neutral, when there is no significant bodily injury. All torts inherently depend upon the factual context of the behavior. A kiss is a simple act of kindness, or an assault, depending upon the surrounding circumstances. *United States v. Sever*, 39 M.J. 1 (C.M.A.1994). The tort of "assault" normally involves intentional infliction of bodily injury, such as a deliberate attack to harm a person. But, those facts were not present here. Here, the jury was allowed to find an "assault" was committed if the Church

"caused physical contact" with Laura when he or she [a Church member] knew or *should reasonably have believed* that [Laura] would regard the contact as *offensive.*" (Jury Instruction, 63a, emphasis added).[25] Thus, the fact finder could impose liability if it felt that Pastor McCutchen should have *reasonably believed* that simply touching Laura on the forehead was "offensive."

And, liability became even more subjective when the Church was left in a *loco parentis* situation. Laura's parents left town knowing that the Church would often be supervising Laura, a minor. Under *in loco parentis*, a defendant is allowed the right to exercise "reasonable" restraint over the child in their temporary custody, the same as a parent. *Hogenson v. Williams*, 542 S.W.2d 456 (Tex. Civ. App. – Texarkana 1976, no writ) (adopting the *in loco parentis* standards of Restatement of Torts (Second) §§ 147, 150, 151, and 155, but expanding the rights to include *reasonable* force to enforce compliance with a command issued for the purpose of controlling, training or educating the child.)

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[25] Jury Instruction 63a, instructed: "A person commits an assault if he (1) intentionally, knowingly, or recklessly causes bodily injury to another; (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another [Laura] when he or she [Church member] knows or should reasonably believe that the other [Laura] will regard the contact as offensive or provocative."

Neutrality and objectivity disappear altogether when it comes to the legal tests for *compensable damages.* In general, mental anguish damages are generally not recoverable under Texas law. *City of Tyler v. Likes,* 962 S.W.2d 489, 496 (Tex. 1997). The exceptions are for unusual cases that involve significant bodily injury (not present here) or injuries of a "shocking and disturbing nature." Also, they can be recovered if the defendants acted with an evil *mens rea* that shows "increased culpability." Trying to decide if the Church and Respondents acted with an evil *mens rea* would mean weighing the motives and beliefs of the church members. Is prayer for deliverance from demons conduct that is "malicious" or "shocking and disturbing" under *City of Tyler v. Likes,* 962 S.W.2d 489, 496 (Tex. 1997)?

Finally, a tort plaintiff must establish proof of *causation:* that the reason she suffers her emotional injuries (PTSD) is because of the defendant's tortious conduct. Once again, this is hardly a neutral inquiry. Laura had been subjected to an entire life time of teachings about demons and "spiritual warfare." Her own expert witnesses, such as Dr. Swen Helge, said that the teachings of the Church about demons (which is protected activity) and the alleged restraint (the alleged tortious activity) have *together* traumatized Laura. Dr. Helge honestly admitted that he could not separate his opinions so as to ignore the general teachings of the Church.

When it comes to *causation* for emotional injuries, Texas courts openly confess that they are subjective. *City of Tyler v. Likes,* 962 S.W.2d 489, 496 (Tex. 1997) ("the law has not yet discovered a satisfactory empirical test for what is by definition a subjective injury.") And, the court has warned that the condition of Post Traumatic Stress Disorder (Laura's condition) is very *subjective* in terms of identifying a specific cause. *S.V. v. R.V.*, 933 S.W.2d 1 (Tex. 1996). When it comes to causation, there is an "imperfect fit" between subjective psychology and objective law. Instead, "opinions about behavior, memory, and psychology depend largely on the *subjective* interpretation of the expert." *Id.* at 42, emphasis added. And, the Court warned that the use of a PTSD diagnosis in civil litigation involves "significant risks of misuse." *Id.* at 19.

In summary, abundant legal authority concludes that the Texas Supreme Court was correct about the non-neutral nature of Texas personal injury claims for recovery of mental anguish damages.

C. There Is No Larger Problem For This Court To Solve; Only Error Correction

Petitioner essentially concedes that the Texas Supreme Court's opinion is not part of any larger problem in American jurisprudence. There has never been a claim like this in United States courts. Petitioner's counsel states that they are "unaware of any other judicial decision" akin to the Texas Supreme

Court's holding below. (Petition, p. 24-25). In other words, Petitioner simply demands error correction.

The First Amendment does not generally insulate churches from civil litigation. Alan Stephens, *Free Exercise of Religion Clause of First Amendment as Defense to Tort Liability*, 93 A.L.R. Fed. 754, 774-77 (1989). On a weekly basis, churches and other religious institutions are sued for a wide variety of cases involving bodily injuries from auto accidents, misuse of funds,[26] negligence in treatment by church counselors,[27] slip-and-falls,[28] affairs by priests,[29] and child molestations.[30] Courts have consistently held that churches can not rely upon the First Amendment to insulate themselves from tort claims for bodily injuries.

However, this body of precedent shifts entirely when the claims are brought by *church members* who sue their former churches to complain of *emotional*

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[26] *Tilton v. Marshall*, 925 S.W.2d 672, 679 (Tex. 1996).

[27] *Nally v. Grace Community Church of the Valley*, 194 Cal. App. 3d 1147, 240 Cal. Rptr. 215, *superseded on other grounds*, 47 Cal. 3d 278, 253 Cal. Rptr. 97, 763 P.2d 948 (1987, 2nd Dist.).

[28] *Garnier v. St. Andrew Presbyterian Church of St. Louis*, 446 S.W.2d 607, 608 (Mo. 1969), cited and explained in *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997) ("The result is that the church, as the owner and occupier of the premises in question, is subject to all the duties and liabilities which are incident to the ownership and possession of real estate.").

[29] *Strock v. Pressnell*, 527 N.E.2d 1235 (1988).

[30] *Noll v. Hartford Roman Catholic Diocesan Corp.*, 2008 WL 4853361 (Conn.Super. 2008).

injuries. In those cases, the courts often refuse to grant relief, or even to entertain the suits. See Stephens, *Free Exercise*, *supra*, 93 A.L.R. Fed. 754.

The Petition cites *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 776 (Okla. 1989). There the court concluded that a church member, *after she left the church*, should have been free to continue her life without continued interference from her former church. But, the court in *Guinn* held just the opposite regarding her complaints against the church about conduct that had occurred *while she had been a member*. As to all church conduct that occurred while she had been a member, the court dismissed all the complaints of tortious conduct causing emotional injury. Thus, the true line regarding "voluntary participation" is membership. One can hardly insist that the Courts assist in a cafeteria-style approach to membership in a denomination, allowing each member to participate, or sue, as they pick and choose among the church's practices.

D. Petitioner Waived Her Complaints Ten Years Ago

This litigation has proceeded for more than a decade. Ten years ago, the Court of Appeals foreclosed her claims for emotional injuries, stating:

> Regarding negligent and intentional infliction of emotional distress, the First Amendment gives Pleasant Glade the right to engage in driving out demons – intangible or

> emotional harm cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for religious practices.

In re Pleasant Glade Assembly of God, 991 S.W.2d 85, 89 (Tex. App. – Fort Worth 1998, orig. proceeding), *Pleasant Glade I*.

Petitioner decided not to appeal that 1998 decision, nor seek further mandamus, certiorari, or otherwise protest this foreclosure of her claims for emotional injuries. Instead, Petitioner attempted to disguise her remaining claims as if they were claims for bodily injury. However, she did not prove such a case at trial. Having failed to prove that there was any significant bodily injury, she returned to her complaints that the "Hyper-spiritual atmosphere" at the Church had caused her emotional harm. But, such a tactic ran afoul of the law-of-the-case from *Pleasant Glade I*. The Texas Supreme Court, below, expressly noted their reliance on *Pleasant Glade I*.

E. The Ecclesiastical Autonomy Doctrine Was Correctly Applied

The Petition concludes with a citation to Justice Brandeis's famous admonition in *Olmstead v. United States*,[31] that "the right to be let alone" is "the most comprehensive of rights and the right most valued by civilized men." The Petition argues that Laura had

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[31] 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

the right to be "let alone" *by the Church*. What the Petition omits by carefully parsing this quotation is that Justice Brandeis is admonishing that civilized men have the right to be "let alone" *by the government*. *Id.* at 478.

It is fundamental that the Constitution embraces the right to be free from unwarranted *government* intervention. The Constitution is not a restraint upon private conduct. *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 195 (1989). The Petition for Certiorari turns Justice Brandeis on his head when it suggests that Brandeis would favor governmental intervention, via the courts, into a private worship service.

The Amicus Brief submitted by the American Jewish Congress argues that governmental interference becomes proper at the time that Laura Schubert stopped "voluntarily participating" in the conduct of the Church. The AJC argues that "voluntary participation" is the constitutional key. Once it is withdrawn, then conduct becomes tortious and justifies governmental interference via the imposition of civil liability on churches.

This "voluntary participation" position might sound laudable on paper, but it is impossible to apply to an enthusiastic crowd of Pentecostals in the midst of spiritual warfare. App. 9-10. The Pentecostal belief about demonic forces is that human will is subverted,

and an unnatural hostility to the name of *Jesus* surfaces.[32] Thus, when Laura Schubert passed out and began writhing on the floor and hallucinating that demons were attacking her, asking her whether she would like to continue "voluntary participation" in Pentecostal practices would be fanciful. This would be akin to asking a person in a diabetic coma or an epileptic fit whether they would like to voluntarily participate in medical care or prayer. Laura's own expert witness, a medical doctor, said she was in a hypo-glycemic delirium.

It is significant that even the American Jewish Congress expressly rejects the standard of individual "voluntary participation" when it comes to young Jewish boys facing circumcision. The American Jewish Congress cites *In re Marriage of Boldt*, 176 P.3d 388 (2008) in its Amicus Brief. In that case, the

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[32] Deliverance from demonic possession means "Jesus frees individuals whose wills are controlled by a hostile, alien, and destructive power." And, possession means that "a dominating control is gained over the personality." Stanley M. Burgess, ed. *Encyclopedia of Pentecostal and Charismatic Christianity*, p. 128 and 189 (Berkshire Publishing 2006). These beliefs and practices may seem quite strange to the reader. But, they are certainly no stranger than the beliefs and practices of the church in the case of *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993). There, this Court decided that the Free Exercise clause protected the religious practice of slaughtering animals to feed their blood to demons during worship services. Pleasant Glade Assembly of God simply seeks the same rights to Free Exercise as was recognized in that case.

AJC denied that a young boy could lawfully refuse circumcision:

> In response, father, joined by amicus curiae American Jewish Congress . . . (collectively, AJC), argues that the trial court did not need to hold an evidentiary hearing, because M's [12 year old boy's] attitude about whether he wants the circumcision is not legally significant. Father asserts that a child is not the decision-maker on such questions, any more than an infant who is circumcised.

The court agreed with the AJC, that the child's objections were irrelevant, so the father could force circumcision on the child. *In re Marriage of Boldt*, 176 P.3d 388 (Ore. 2008). This is interesting, because some authorities on Post Traumatic Stress Disorder claim that male circumcision is an assault that traumatizes the child, causing PTSD. *Adverse Sexual and Psychological Effects of Male Infant Circumcision*, Psychological Reports, No. 88. p. 1105; and George C. Denniston, *Understanding Circumcision: A Multi-Disciplinary Approach to a Multi-Dimensional Problem,* pages 253-270 (2001).

"Voluntary participation" in a set of beliefs is generally shown by membership in the denomination. Otherwise, Laura's supposed withdrawal of her voluntary participation would be a constantly changing wind. One minute she was proclaiming that she wanted to be a missionary for the Church, the next she was "hallucinating" (her terms) about being attacked by demons, the next she was summoning the

youth of the Church so that she could share with them her recent vision, the next she was "finally complying" with the Church's request to say the name of *Jesus*. She then returned to the Church day after day. Her "voluntary participation" did not end, even when her father began writing letters about "friendly fire" from spiritual warfare. He said she would someday return to the "front lines" to continue the spiritual battle as a missionary for the Church. (App. 6)

Thus, the point at which she finally indicated that she wanted to be "let alone" by the Church, was long after all of the incidents, when she permanently left the Church.

The Texas Supreme Court's decision below is consistent with the body of law generally referred to as the Ecclesiastical Autonomy Doctrine. The Doctrine recognizes that it is not only the final imposition of liability, but the civil process *itself*, which impinges on a Church's Free Exercise rights:

> The resolution of such [civil law] charges by the Board, in many instances, will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission. It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.

N.L.R.B. v. Catholic Bishop of Chicago 440 U.S. 490 (1979).

The very act of writing this Brief requires the Church, to some extent, to explain and partly justify its beliefs to outsiders. The very process of the judicial inquiry causes an *entanglement* between church and state (the courts). Respondents respectfully submit that even granting certiorari will entangle this Court in this religious dispute. The Texas Supreme Court declined to insert itself between the Church and its own members. This Court should respect that decision, and not force the Texas courts into this religious fray.

CONCLUSION

For the foregoing reasons, the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

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December 15, 2008

August 2, 1996

Dear Pastor,

Thank you for the two occasions that we have had to talk since the week of Wednesday, June 5th to Wednesday, June 12th. Laura is still really struggling, as is our family. . . . This Wednesday night Laura talked to me and told me things that I had never heard about the Friday night, Saturday morning experience. She almost relived it in my presence and I hope, though difficult, this was a breakthrough for her. I had not heard many of these things before and I felt that you needed to hear what Laura told me.

* * *

This is what Laura told us happened. One boy (Ray) was in the sanctuary praying because he was burdened for the group again. The lights in the sanctuary were off. Rod checking on him and the boy told Rod that while praying he had seen a demon by the sound booth. He said that he had gotten scared and prayed and the demon left the church and the burden lifted. Rod called the other kids into the sanctuary. Laura says that Rod has told stories at some other times about demons to the kids relating to another church where a pastor had to sleep outside because of the demons in the church. When the young people entered the sanctuary, they turned on only the platform lights so the atmosphere at midnight was probably pretty spooky in the sanctuary. Laura says the boy shared with them about seeing the demon

leaving the church and it was strange and errie, [sic] but they accepted it. Then they started praying for each other and slaying each other in the Spirit. Things got emotional right away. Then the boy who said he saw a demon earlier saw more demons. He said with excitement and fright, "They are still here! They're still trying to get us! They're running, woo, there goes another one!" The kids were stunned. Rod got right into it and said to the stunned kids, "He's right, we've got to get them!" Laura said Rod got very excited, yet he was very serious and convincing. He said things like, "This battle is not over yet!" He told everyone to get the bottles of oil and anoint everything. "Don't leave anything untouched." The boy was still saying, "There's another one, there's another one!"

The kids started to anoint the church and Rod started to sense more demons in the church. He called the kids to near the sound booth and asked the kids, "Can you feel it? Can you feel the coldness of the demon?" The kids felt chills and goose bumps of fear. Laura says she was scared. Rod starting coming against the demon loudly. All the kids were screaming at the Devil and telling him to leave. They were beating the sound booth door. Rod said, "They're running, they're running! They're all over this church! We've got to get them!" The kids were in panic and fear. Rod was so serious. Holly was into it also. At one point the phone rang. Holly said that there was a demon on the phone line and that she heard it breathing. This was frightening to the kids.

As Laura tells it, things were going crazy, but that night she thought it was God, or rather demons; a real spiritual experience.

* * *

. . . This frightening experience went on until about 4:30 am in the morning when the kids were exhausted, and physically and emotionally drained. The kids sat down exhausted on the floor. At about that time Rod said that saw a cloud of the presence of God fill the church.

* * *

The next day, Sunday, June 9th, Laura, Amy and Joseph went to church. During this service several of the young people gave testimonies of what had happened on Friday night. They believed that it was all God's moving. The people of the church, who did not know the details of what had actually happened, thought it was God also. There were "amens" and applause for the kids bravery under fire. . . . Supposedly Joseph was down on the floor for over two hours with kids and adults all around him praying. Amy says that it got weird. The kids were making strange moans and praying loudly and wildly. Amy had to call her boyfriend to cancel their lunch and told us that she hung up very quickly so that he would not hear the noises being made by the youth group. Amy was stunned by the service. Many people stayed for a long time, but by 2:30 pm most of the people had left to go home. Joseph was still on the floor with the group praying for him. Even though Rod told you that Holly

was misunderstood, Laura says that Holly was over Joseph and saying that she saw demons coming out of Joseph. Holly said to Laura that she saw a vision of the claw of a demon coming out of Joseph's neck and on his back. She told Laura that she saw in a vision Laura and Kevin on a mountain with large knives, cutting a path for the demon to leave Joseph. She said she saw another demon holding Joseph's leg. When his knee happened to jerk (after being on the floor for two hours), Holly said "God just gave me a vision of the last demon coming out of Joseph." Laura says others heard Holly also.

* * *

. . . Laura was standing at the altar and told a girl that she wasn't feeling well and the girl prayed for Laura but Laura collapsed to the ground. People saw Laura laying on the floor grinding her teeth and looking very strange. She was having a physical and emotional breakdown, but nobody had enough understanding to realize it. Everybody at church was concentrating on thinking revival was taking place when in realty Laura was being seriously hurt. We do not know how long people prayed and rebuked the Devil over her. Several of the youth were allowed to hold her down until she was physically bruised. Laura had bruises and scratches on her from the kids being permitted to use force to hold her down. We saw the bruises when we arrived home. She apparently was fighting wildly at the altar.

* * *

. . . Understand that Laura was not sleeping through the nights because she was so frightened by all the demon business. After the service Rod told the young people to find a place to pray. The youth service sermon that night was on putting on the armor of God and fighting off the darts of the Devil. It seems it was always fighting the Devil, just like the play the kids did where Holly painted them horribly with the number 666 on their foreheads and wrists and used a blacklight to make a frightening situation. At some point, one of the young people saw that Laura was over in the corner balled up and looking strange again. He said, "Its happening again. Laura, we wouldn't let you fight this along [sic]." He called Rod and Holly and all the young people over. Everyone began to realize that she is in trouble, and they all started to pray strongly and loudly, coming against the Devil.

* * *

Since these many experiences Laura has started having terrible nightmares. Laura has had the feeling that a demon is in her room at night. She has had nights where she is so scared that she can't move, even to turn on the light or the TV, or to come to get us.

* * *

. . . As missionaries we can not [sic] get into local church affairs. We will leave it to you to investigate if you feel it is necessary. You may not feel that anything

too serious has happened . . . I am placing this situation in your hands and hope God gives you wisdom.

* * *

. . . Years ago Laura faced fear and danger in Africa and was emotionally hurt by violence seen in a government struggle. There we had real things to be frightened of and were warned by the US government to watch out for real dangers. I was afraid. . . . What those kids went through during a night of spiritual battle was just as hurtful as what Laura faced in Africa. Laura knows that Demons are bigger and more dangerous than Cameroonian soldiers with machine guns. Pray for her. She went through a war and is now a casualty, feeling abandoned by her own troops at the frontlines as an injured soldier. She deserves a purple heart because she fought a good fight, though she took a hit from friendly fire. . . . We are believing that in the [sic] with time she will be able to be trained to go back to the frontlines of the battle and to fulfill the ministry call that she received at the altars of Pleasant Glade.

Sincerely,

Tom Schubert

AFFIDAVIT OF TOM D. SCHUBERT

1. My name is TOM D. SCHUBERT. I am 46 years of age. I reside at xxxxx xxxxx xxxxx, xxxxx, xxxxx xxxxx. . . .

2. I am an ordained minister with Assemblies of God. I hold a Bachelor of Science degree in Christian Education from Southwestern Assemblies of God College, Waxahachie, Texas, and I have been an appointed missionary of the Assemblies of God since 1985. I am a Plaintiff in this lawsuit. Laura Schubert is my daughter. Judy Schubert is my wife.

* * *

6. As a minister in the Assemblies of God organization, and as one who is familiar with the Church's position papers, I have read the position paper of the General Council of the Assemblies of God entitled, "Can a Believer Be Demon Possessed." It is the official position of the Assemblies of God on this issue. It is attached as pp. 15-23 of Exhibit C of Defendant McCutchen's affidavit in support of Defendants' Motion To Dismiss. This document is also available on the internet, free of cost. This paper clearly teaches that the Assemblies of God organization does not believe that Christians (believers) can be possessed by demons and that the organization does not practice "exorcising" or "delivering" demons from Christians. . . .

7. As an expert in the theology of the Assemblies of God faith, I have reviewed Defendant McCutchen's letter of March 18, 1996 . . . In both documents

Reverend McCutchen states that while praying for my daughter on Wednesday night, June 12, 1996, he spoke the words "Come out, in the name of Jesus!" or words to that effect. These are the words of an "exorcism" practice and such practice is contrary to the published Assemblies of God beliefs and practices and outside the religious tenets of the church.

8. On or about May 19, 1996, Laura Schubert was baptized in the Pleasant Glade Assembly of God Church by Reverend Lloyd A. McCutchen. As a certified baptized believer, Laura Schubert could not be demon possessed, according to Assemblies of God beliefs and doctrine and could not have the need of having demons exorcised from her being because the Assemblies of God organization does not practice casting demons out (exorcising) of believers.

* * *

FURTHER AFFIANT SAITH NOT.

/s/
TOM D. SCHUBERT

* * *

AFFIDAVIT OF PASTOR LLOYD A. MCCUTCHEN

* * *

1. My name is Lloyd A. McCutchen. I am 54 years of age and I reside at xxxxx xxxxx xxxxx, xxxxx, xxxxx xxxxx. . . .

2. I am the Senior Pastor of Pleasant Glade Assembly of God. I have been a Pastor of Pleasant Glade Assembly of God since 1985 and a Pastor within the Assembly of God Denomination since 1968. . . .

* * *

7. Laura Schubert, Tom Schubert, and Judy Schubert are long time members of the Assembly of God Denomination. In fact, Tom Schubert and Judy Schubert served as missionaries to Cameroon, Africa on behalf of the Assemblies of God Denomination. After returning from that assignment, they began attending the Pleasant Glade Assembly of God Church. Obviously they were never coerced to attend and did so of their own free choice. Tom Schubert has occasionally preached from our pulpit.

* * *

16. Within our church, it is not unusual for a person to be "slain in the spirit". This is a biblical experience, related in several accounts of the Bible. When this happens, a person often faints into semi-consciousness, and sometimes lies down on the floor of our church. It is our belief that this is a positive

experience in which the holy spirit comes over a person and influences them. It is our belief that the holy spirit is not the only spirit that can influence a person. Evil spirits can move and can torment persons. Also, it is possible that a person (particularly a young dramatic person such as Laura Schubert) can take advantage of the attention that this activity brings. They can fake the entire experience in order to draw attention to themselves.

17. When a person comes forward in the service and begins having one of these experiences, it is sometimes difficult to discern whether: (1) the person is having a positive experience with the holy spirit, (2) whether there might be evil spirits engaged in warfare against the holy spirit, (3) whether there are emotional issues are involved, or (4) whether the person is faking the entire process in order to gain attention. Discerning between these various influences and factors is a matter on which even pastors within the church might disagree. Tom Schubert (who was not there) attributes Laura's collapsing on the floor to emotional and physical exhaustion. Myself and others within our church attribute Laura's actions to other factors.

* * *

Further Affiant sayeth not.

LLOYD A. McCUTCHEN,
PASTOR

SUBSCRIBED AND SWORN TO BEFORE ME on this ___ day of July, 1995.

* * *

WHERE WE STAND

* * *

The Official Position Papers
of the Assemblies of God

* * *

Introduction

The statements on the issues in this book were approved as the official statements of The General Council of the Assemblies of God by the General Presbytery, the ruling body of the Assemblies of God, over the past twenty years. . . .

* * *

1
The Inerrancy of Scripture

We believe the Bible is the Word of God written; it is the revelation of the truths of God conveyed by inspiration through His servants to us. As such, it is infallible and without error.

* * *

2
Can Born-Again Believers Be Demon Possessed?

The spread of oriental religions and the occult in America has brought with it an increase in demon possession similar to that reported formerly by missionaries on foreign fields. All too often there has been too little teaching in this area. Many have felt

all that is necessary is to preach Christ, and the demons will go away.

But the New Testament does more than command to preach Christ. It warns very definitely against the enemy of our souls and shows that demons are not to be treated lightly. It also emphasizes that deliverance is available through the "finger of God," the power of the Spirit, and the name of Jesus.

The Danger of Extreme

There is a danger, however, when emphasizing any neglected doctrine, to go to an extreme which is beyond the intent of the Scriptures. It is also possible to be sidetracked into making the neglected doctrine the whole ministry. This seems to be the case with some who become fascinated with the subject of demonology. They are trapped into giving most of their attention to it. The more demons they cast out, the more there seem to be to cast out, and the rest of their ministry is practically ignored.

* * *

One of the regrettable side effects of an unscriptural over-emphasis on demonology is that scriptural teaching is sometimes brought into disrepute. This was one result of the so-called witchcraft of 16th and 17th century England and 17th century America. . . .

* * *

Though many of the accused showed a spirit and a faith worthy of Christian martyrs, judges who were

men of personal integrity pronounced them guilty. As a result of the publicity given these trials, Americans of that day turned away from the supernatural and branded all that the Bible teaches about Satan and evil spirits as mere superstition.

* * *

Exercising caution, however, does not mean we should treat the matter of demonology lightly. The Bible clearly recognizes both the activity of demons and their great number. This is even more evident when we recognize that the word *devils* in our common English version really means "demons." Actually, the word *devil* (Greek, *diabolos*, "the slanderer") is appropriate only for Satan. This is not to say, however, that the devil does not work through demons. Satan is a created being, a finite spirit, and is not omnipresent. He does most of his work through demons scattered in various parts of the world. Jesus' work in casting out demons was at least a part of His work of healing those oppressed (exploited, dominated, under the tyrannical rule) of the devil (Acts 10:38). (It should be noted that the word *oppressed* as used here is stronger than in today's usage.)

* * *

What Writers Have Said

Most of the older writers say that genuine Christians cannot be possessed or indwelt by a demon.

* * *

More recently writers of various denominations have taken a different view. M. H. Nelson, a medical doctor, tells of numerous reports of Christians who apparently have suffered from demon possession. He suggests, however, that some of them may be in open rebellion against God. (Apparently, he believes in eternal security and still calls these rebels Christians.) He goes on to say, however, that though a demon may gain an influence *over* the mind and body of a Christian, it is very doubtful that the body of a Christian can be *possessed* by a demon.

Others say that a Christian can have a demon in his body without it possessing his inner man. This seems contrary to the biblical view of the body as the temple of the Holy Spirit. It also goes against the biblical view of the unity of the body, soul, and spirit as far as responsibility is concerned. The fragmentation of the person into various aspects is a heathen idea. If a demon enters any area of the body or mind (or attitudes), it enters *you*!

* * *

Resisting Evil Forces

It seems evident that the term *possessed* should not be applied to true believers. What the Bible does show is that Satan and his cohorts are external foes. We are in a warfare against Satan's forces and they are looking for opportunities to *attack* us. (See Ephesians 6:12.) The biblical emphasis is on what we must face in the very atmosphere around us. The call is never for us to get someone to cast the demons out of

us. They are out there attacking us, testing us, not possessing us. . . .

* * *